

**Federal Communication Commission
Washington, D.C. 20544**

In the Matter of Rules and Regulations)	
Implementing the)	CG Docket No. 18-152
Telephone Consumer Protection Act and)	CG Docket No. 02-278
Interpretations in Light of the D.C. Circuit's)	
ACA International Decision)	

**Reply Comments of the
American Independent Business Alliance (AMIBA)**

The American Independent Business Alliance (AMIBA) ¹ respectfully submits the following comments to the Federal Communications Commission (FCC) on behalf of its Affiliates and the consumers whose interests are represented by said Affiliates in response to FCC's request for comments on the interpretation and implementation of the Telephone Consumer Protection Act. AMIBA has reviewed the June 13, 2018 comments filed in these dockets by the National Consumer Law Center and supports them. AMIBA also notes that it has consistently opposed the use of robocalls made without either the affirmative consent of the party being called or an emergency reason for the communication.

These unsolicited calls are especially burdensome to our independent business constituents who --unlike many people -- can't afford not to answer calls from unfamiliar numbers. As Congress found in 1991 when it enacted the Telephone Consumer Protection Act [are] a "nuisance and an invasion of privacy, regardless of the type of call" ... consequently, banning such calls was "the only effective means of protecting telephone consumers from this nuisance and privacy invasion."²

¹ AMIBA is a 501c3 non-profit organization dedicated to helping communities become more self-supporting and resilient through fostering a culture that values and supports independent business and local entrepreneurs. AMIBA is incorporated in Colorado as a non-profit corporation. AMIBA's full Affiliates are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Affiliates operate independently from state utility commissions. Some AMIBA Affiliate offices are separately established advocate organizations. AMIBA's associate and affiliate members also represent the interests of utility consumers but are not created by state law or do not have statewide authority. Some AMIBA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

² See, Pub. L. No. 102-243, §§ 2(10-13), (Dec. 20, 1991), *codified at* 47 U.S.C. § 227.

Although Congress addressed these concerns by enacting 47 U.S.C. § 227(b)(1)(A)(iii), in the twenty-seven years since Congress acted, technology has changed and robocalls have been escalating, to the point where more than 3.4 billion robocalls were made in April of 2018.

The specific technology used for these unsolicited communications does not change the adverse effects they impose on the recipients. Allowing any technology to do so would undermine the express intent of Congress to protect the public from any unsolicited call using an automated telephone dialing system. Consequently, AMIBA believes the term “Automated Telephone Dialing System” (ATDS) should not be reinterpreted in this proceeding so as to narrow the consumer protections historically provided for in the Telephone Consumer Protection Act. Many ratepayer and consumer protection groups have publicly expressed their agreement with this position, including through the New Jersey Division of Rate Counsel's Reply Comments in CG Docket No. 02-278, in April 2015.³ AMIBA urges the FCC to adopt an inclusive definition of “Automated Telephone Dialing System” while carving out the ordinary use of smartphones, which would continue to provide consumer protections from unsolicited calls while conforming to the requirements of *ACA International v. F.C.C.*, 885 F.3d 687, 700 (D.C. Cir. 2018).

³ See <https://ecfsapi.fcc.gov/file/60001042717.pdf>.

In conclusion, as noted above, AMIBA supports FCC regulations that protect the public from unsolicited calls, including prohibitions on the use of any technology, without the affirmative prior consent of the party being called, including for the purpose of making telemarketing or informational calls, except calls for the purpose of public safety.⁴

Respectfully submitted,
Jeff Milchen, Co-Director
AMIBA
222 South Black Avenue
Bozeman, MT 59715 S
Phone (406) 582-1255

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⁴ See, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act, CG Docket No. 02-278, Petitions of Blackboard, Inc., and Edison Electric Institute, et al., Declaratory Ruling, 31 FR 9054, 9066-67 (rel. August 4, 2016). FCC clarified that consent by public utility consumers to contact by the public utility reasonably includes consent to receive “calls closely related to the service include those that warn about planned or unplanned service outages; provide updates about service outages or service restoration; ask for confirmation of service restoration or information about lack of service; provide notification of meter work, tree trimming, or other field work that directly affects the customer's utility service; notify consumers they may be eligible for subsidized or low-cost services due to certain qualifiers such as, *e.g.*, age, low income or disability; and calls that provide information about potential brown-outs due to heavy energy usage.”